

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5321 of 1997

to

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Date of decision: 5-8-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GSRTC

Versus

HEMABHAI DAYA HARIJAN, F/O LATE KAMLESH HEMABHAI HARIJAN

Appearance:

MR HARDIK C RAWAL for appellant

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/08/98

ORAL JUDGEMENT

Both these appeals have arisen from common judgment in M.A.C.Petition No.64/90 and M.A.C.Petition No.64/90 decided on 13-10-1997 by the Motor Accident Claims Tribunal (Auxi.), Kachchh at Bhuj, and as such these appeals are being heard together and are being disposed of by this common judgment.

2. One important fact to be noticed is that these appeals have arisen from one and the same motor vehicle accident. M. A.C.P. No.63/90 has been filed by the parents of the deceased child aged 10 months for compensation. Claim Petition No.64/90 has been filed by the mother of the child, who sustained injuries in the same accident. The facts of the case in brief are that on 13th October, 1989 deceased child and his mother were waiting for S.T. bus near Lodrani S.T.Bus Stop. At about 1-00 O' clock, S.T. Bus plying from Dholavira to Bhuj had reached Lodrani bus stop. Respondent No.3 herein was driving the bus. He stopped the bus and then the lady along with her child entered the bus. At that time the conductor of the said bus suddenly gave signal without closing the door of S.T.Bus and the bus driver abruptly started the bus with full speed and in negligent manner, and as a result thereof the mother carrying the child lost balance and fell down from the bus. Both mother and child sustained injuries. Both were taken to the Government Hospital, Rapar. The child was declared dead and the mother was treated as indoor patient there.

3. In Claim Petition No.63/90 compensation of Rs.1 lac was claimed on account of death of the child; and in Claim Petition No.64/90 Rs.50,000/- were claimed as compensation for the injuries sustained by the lady. The Tribunal awarded compensation of Rs.75,000/- as compensation for the death of the child together with interest at the rate of 15% per annum from the date of claim application till realisation. In the injuries case the claimant - lady has been awarded Rs.50,000/- as compensation with interest. Hence these appeals before this court.

4. Learned counsel for the appellants made two fold contentions, that for the death of the child of 10 months award of Rs.75,000/- as compensation is towards the higher side. It is has been contended that the award of Rs.50,000/- to the mother of the child as compensation

for the injury sustained by her, in the instant case, is also on the higher side. I do not find any substance in any of the contentions raised by the learned counsel for the appellants.

5. The Tribunal, after considering all the aspects of the matter has awarded Rs.75,000/- as compensation to the parents for loss of their child. The Tribunal rightly observed that because of the loss of the child the parents remained in trauma throughout their life and they cannot be compensated in any manner for this loss, saving the monetary compensation awarded for this tragedy as a result of rash and negligent driving of the S.T. bus, and it is the only solace to repair it. This boy of ten months is a toy for his parents and the loss of this toy to the parents is difficult to be compensated by awarding compensation in monetary terms. The loss suffered by the parents due to sudden demise of their ten months old child cannot be calculated in terms of money. Taking into consideration all relevant factors to be kept in mind while considering the case for awarding compensation for the loss of the child to the parents, the Tribunal has reached just and reasonable figure in which normally this court should not interfere. The approach made by the Tribunal in this matter cannot be said to be perverse. Hence First Appeal No.5321 of 1997 is dismissed in limine.

6. In M.A.C.P. No.64/90, the award of Rs.50,000/to the claimant lady also cannot be said to be towards higher side. I find from the award that the lady has taken treatment for injury sustained by her in the the Rapar Government hospital and in G.K. General Hospital, Bhuj as indoor patient. She remained in G.K. Geneal hospital, Bhuj as indoor patient from 15-10-1989 to 29-10-89. She sustained fracture on left condyle bone. She also sustained injuries over left hand, chest and other parts of the body. Certificate of Orthopaedic Surgeon Dr. Suresh A. Doshi shows that she has sustained permanent disability to the extent of 22%. Taking into consideration the pain, shock and suffering, which this lady has undergone because of the injuries suffered by her in the accident the Tribunal has not committed any error in awarding Rs.15,000/- under this head. Under the head of medical expenses, looking to the nature of the injury sustained and the period through which she remained as indoor patient, the award seems to be on lower side. Rs.1,000/- which has been awarded under the head of nursing and care which would have been necessary for the period she stayed at the hospital is not seriously contested by the learned counsel for the

appellant also. He has also not seriously contested the award of Rs.1000/- under the head 'conveyance charges'. Award of Rs.1000/- for rich diet is also not contested. The amount of loss of income of Rs. 3000/- is also not towards the higher side. The main thrust of the argument remains on the compensation awarded under the head 'loss of future income. The Tribunal has taken the disability of the lady to 22%. Orthopaedic Surgeon has certified that the lady has permanent disability of 22%, but the Tribunal has taken permanent disability of the body as a whole at 10%. That also seems to be correct approach, to which no exception can be taken. The learned counsel for the appellant is unable to satisfy this court how in a case where total permanent disability was taken to be 22%, 10% disability of the body as a whole could not be taken, on the basis of which calculation has been made and the Tribunal has taken average income of the claimant to be Rs.1500/-, which also does not seem to be towards higher side looking to the increase in minimum wages or labour charges. The lady was only 26 years old and multiplier of 15 taken is also proper figure. Taking into consideration the totality of the facts of this case, the award of Rs.50,000/- to the lady for the injuries sustained by her in the accident is reasonable to which no interference of this court is called for.

7. The First Appeal No.5322 of 1997 also deserves to be dismissed, and the same is accordingly dismissed.

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